IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3561 of 1997

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R.SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DINESHKUMAR G CHAVDA & 8 - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

==========

Appearance:

MR IS SUPEHIA for Petitioner (s) : 1-9.

MR MAULIK NANAVATI, AGP for Respondent (s) : 1- 2,4,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/2/2007

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and

validity of the order passed by the Collector, Ahmedabad dated 15/25.4.1997 by which, in exercise of the powers under Section 258 (1) of the Gujarat Municipalities Act; 1963 the Collector, Ahmedabad has set aside the resolution Nos.1 to 4 of the Selection Committee of the Viramgam Nagar Palika by which the respective petitioners were appointed/promoted.

2. It is the case on behalf of the petitioners that pursuant to the advertisement issued by the Viramgam Nagar Palika, all the petitioner applied for the post of Class – III and Class - IV and pursuant to such applications, all the petitioners were called for the oral interviews by the Selection Committee, which were held by the respondent - Municipality on 6th October, 1996 and that the Selection Committee held interviews for various posts in Class – III and Class – IV in the respondent No.3 – Municipality on 6th October, 1996 and accordingly, the petitioner Nos.1 to 3 belonging to the Scheduled Castes Community were appointed on the reserved

posts as there was a backlog as Junior Clerk and the petitioner Nos.4 and 5 were appointed as Cleaner-cum-Driver and petitioner Nos.6 and 7 were appointed as Peons and the petitioner No.8 was appointed as Water Pump man. That on 10th October, 1996, all the petitioners were issued appointment orders in the respective posts and they joined their duties. That a past councilor – respondent No.5 herein, whose brother was working with the Municipality, filed an application/appeal before the Collector on 10th October, 1996 requesting him to cancel the improper resolution, while exercising powers under Section 258 of the Gujarat Municipalities Act. It was contended on behalf of the said councilor / appellant that the resolution dated 6th October, 1996 issued by the respondent No.3 – Municipality was not in consonance with the legal provisions and that the Selection Committee had indulged in nepotism and corrupt practices and has selected their nearer and dearer one on the post of the Municipality. It was also submitted on behalf of the said

councilor that the direct recruitment was made without the sanction of the Director of the Municipality or the State Government. Initially, the Collector, Ahmedabad passed an order dated 14th December, 1996 quashing and setting aside the resolutions passed by the Selection Committee and the appointments of the petitioners, however, as the said order was passed without giving opportunity to the petitioners and therefore, the petitioners preferred Special Civil Application No.10563 of 1996 before this Court and the learned Single Judge of this Court vide its judgment and order dated 24.1.1997 allowed the said Special Civil Application and quashed and set aside the order passed by the Collector, Ahmedabad dated 14.12.1996 only on the ground that the said order was passed without hearing the petitioners and remanded the matter to the Collector, Ahmedabad. That thereafter, on remand and after giving an opportunity to all the concerned parties, the Collector, Ahmedabad passed the impugned order dated 15/25.4.1997 and set aside

the aforesaid resolution Nos.1 to 4 of the Selection Committee and consequently the appointments of the petitioners by holding that the resolutions and the appointments are illegal and without obtaining the consent of the Directors of the Municipality/Competent Authority and that the same was in breach of the directions issued by the Director of Municipality and Deputy Secretary, Urban Development and Urban Housing Department, Gandhinagar. The Collector observed that it is also not proved that the Selection Committee of the Viramgam Nagar Palika while passing the aforesaid resolutions dated 6.10.1996 has acted in accordance with law, rules and regulations and therefore, the said resolutions are illegal. Consequently, the District Collector, Ahmedabad directed to restore the status-quo/position prior to the aforesaid resolution Nos.1 to 4 dated 6.10.1996. Being aggrieved with the said order passed by the District Collector, Ahmedabad dated 15/25.4.1997 in cancelling/quashing and setting aside the

resolutions Nos.1 to 4 of the Selection Committee of the Viramgam Nagar Palika dated 6.10.1996 and by further directing the Municipality to restore the position prevailing prior to the aforesaid resolutions, the petitioners have preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Shri I.S.Supehia, learned advocate appearing for the respective petitioners has vehemently submitted that the selection and appointments of the petitioners were made in accordance with law i.e. they were eligible and qualified in reserved and sanctioned posts as their appointments were made after issuing advertisement and after inviting applications and after proper selection. Relying upon the judgment of the Division Bench of this Court in case of ***H.H.Parmar V/s. Collector, Rajkot & Another*** reported in **1979 (2) GLR Page – 97,** he has submitted that once the resolutions were implemented, the Collector could not have

exercised powers under Section 258 (1) of the Gujarat Municipalities Act, more particularly, when the resolutions passed by the Municipalities are not unlawful. He has also further submitted that Section 50 of the Act would not apply since the posts were not created but they were filled in and that too to clear the backlog of the reserved posts. Shri Supehia has further submitted that the petitioners, except the petitioner No.3, who has left, are working since October – 1996 under the orders of the Court and therefore, their services should not be now disturbed. Making the above submissions, he has requested to allow the present special civil application and to quash and set aside the impugned order passed by the Collector, Ahmedabad.

4. Opposing the present special civil application, Shri Maulik Nanavati, learned AGP as well as Shri Dhotre, learned advocate appearing for the respondent No.5 have submitted that the order passed by the Collector, Ahmedabad in exercise

of the powers under Section 258 of the Gujarat Municipalities Act is just and proper and in accordance with law. He has submitted that the entire alleged selection process was an eye wash and camouflage. It is submitted that only nearer and dearer were appointed and that too without following any procedure and/or obtaining the sanction of the competent authority. It is further submitted that even the advertisement, which was given in the local news paper was nothing but a show and an eye wash as the said advertisement was too vague and no particulars with regard to the vacant posts were given in the said advertisement. It is submitted that in the said advertisement, the description of the posts vacant, number of posts vacant, whether any reservation is there or not, whether any backlog is there or not, all the particulars were not given and general applications were invited and on the basis of such advertisement, the selection committee accepted the applications from the respective petitioners and others and the impugned resolutions came to be

passed. It is also further submitted by him that selection committee is required to only recommend the names and the powers are with the General Board and the appointments are to be made by the Chief Officer. In the present case, on the basis of the resolutions of the selection committee, the President has issued the impugned orders straightway which are absolutely illegal and contrary to the provisions of the Gujarat Municipalities Act and rules and regulations and it has rightly been set aside by the Collector, Ahmedabad in exercise of the powers under Section 258 of the Gujarat Municipalities Act. It is also further submitted that so far as the contention on behalf of the petitioners relying upon the judgment of the Division Bench of this Court in case of ***H.H.Parmar V/s. Collector, Rajkot & Another (supra)*** is concerned, it is submitted that in view of the subsequent Full Bench decision of this Court in case of ***Parshottambhai G. Chavda V/s. State of Gujarat*** reported in **1998 (1) GLH Page – 519,** it is not a good law and if it is found that the

resolutions are illegal and unlawful even after the same are implemented, the Collector would still have a jurisdiction under Section 258 of the Gujarat Municipalities Act. **H**e has also replied upon the recent decision of the learned Single Judge of this Court in case of ***Rajeshbhai Thakorbhai Bhatt V/s. Director of Municipalies*** reported in **2005 (9) GHJ Page – 487** in support of his above submission and requested to dismiss the present special civil application.

5. Meeting with the submission on behalf of the petitioners that as the petitioners are working since 1996, they cannot be disturbed, relying upon the recent decision of the Hon'ble Supreme Court in case of ***State of Gujarat V/s. Dilipbhai Shaingram Patil*** reported in ***2006 AIR SCW 4588***, learned AGP has submitted that merely because, the petitioners are continued in service pursuant to the interim order, is no ground not to disturb the petitioners if ultimately it is found that their appointments were illegal and the resolutions by which they were appointed,

were illegal and unlawful. Therefore, it is requested to dismiss the present special civil application.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. At the outset it is required to be noted that when this petition was heard by this Court on 29.11.2006, nobody represented the Nagar Palika. On going through the impugned order, it appeared to the Court that the allegations were with regard to favouritism and nepotism and some of the relatives of the members of the Nagar Palika were appointed by illegal means and at the same time it was the contention on behalf of the petitioners that their appointments were made after following due procedure and after inviting applications on merits. As nobody represented the Nagar Palika, this Court by order dated 29.11.2006 directed the Chief Officer and the President of the Viramgam Nagar Palika to personally remain present before this Court and

the Collector, Ahmedabad was directed to seize the entire record relating to the selection of the petitioners and the entire procedure and proceedings of the selection committee of the Viramgam Nagar Palika dated 6.10.1996 and was directed to place the same before this Court on the next date of hearing. On the next date i.e. on 6.12.2006, it was submitted on behalf of the Collector, Ahmedabad that pursuant to the order passed by this Court, the Collector has seized the relevant records and has submitted that the original resolutions passed by the selection committee and other relevant original papers such as, interview calls, marks, proceedings of the selection committee are not found available in the Office of the Nagar Palika. The Chief Officer of the Nagar Palika has also filed an affidavit dated 11th December, 2006 pointing out that he has handed over the following records and documents available with the office of the Nagar Palika :-

(i) Zerox copy of advertisement published

in local daily for recruitment in Nagar Palika,

(ii) File containing applications made by candidates for employment in Class – IV vacancies (pages 1 to 114 in original),

(iii) File containing applications made by candidates for employment in Class – III vacancies (pages 1 to 209 in original) and,

(iv) Xerox copies of Resolution Nos.1 to 4 concerning recruitment passed by the Selection Committee of the Nagarpalika.

He has also further submitted that the subsequent original copies of the appointment orders issued by the then President of the Nagar Palika and the joining reports of the petitioners could be traced and the same have been handed over to the Office of the Collector. He has also further submitted in the affidavit that no other records or documents concerning the appointment process held in the year 1996 is available in the Office of the Nagar Palika. He has also further submitted in the affidavit that no details of the records and proceedings of the selection committee of the interviews taken by

the candidates and the basis for that selection is available in the Office. He has also further submitted in the affidavit that 11 persons were appointed by the selection committee to various posts and service books of all those individuals are available in the Nagar Palika and the same have been handed over to the Collector, Ahmedabad. He has submitted that perusal of some of these service books reveals that the Chief Officer, at the relevant time, has not put his signature against the entry of the appointments of incumbents. He has also further submitted that no other file, document or record except what is stated hereinabove could be found at the Office of the Nagar Palika. Thus the original relevant records pertaining to the selection/ interviews by the selection committee are not available in the office of the Nagar Palika. On going through the advertisement it appears that the said advertisement published in the "Jaihind" newspaper is too vague. It does not give any particulars with regard to the description of the posts, number of posts

vacant, whether there is any reservation or not, educational qualifications required, age, criteria, etc. On going through the said advertisement, it appears that it has been mentioned in the said advertisement that for Class – III and Class – IV posts, which have fallen vacant in the Nagar Palika, applications are invited on or before 29.5.1996. On the basis of such defective advertisement, it is the case on behalf of the petitioners that they have applied for the various posts. It is the contention on behalf of the petitioners that they have beenappointed after due interviews and selection by the selection committee. However, as statedabove, the relevant records and proceedings of the alleged interviews and selection held on 6.10.1996 are not available in the Office of the Nagar Palika. Even the original resolutions passed by the selection committee are also not available. Except the original orders issued by the President of the Nagar Palika and joining reports, no records and proceedings are available. Nothing has

been borne out that the appointments of the petitioners were on merits after due selection and interviews. It is also required to be noted at this stage that under the provisions of the Municipalities Act and rules and regulations and the various instructions issued by the competent authority, the selection committee is required to only recommend the names and the ultimate powers vested with the Chief Officer. In the present case, the orders have been issued by the President of the Nagar Palika, who has no jurisdiction and/or authority. It also appears from the service books that the Chief Officer at the relevant time has not put his signature at the time of initial entry of the petitioners. Thus, it appears that the Chief Officer was not agreeable to the appointments of the petitioners.

8. It is required to be noted that the allegations are with regard to nepotism and favouritism and it was alleged that some relatives of the sitting members/councilors of the Nagar Palika

were appointed. On considering the order passed by the Collector, it appears that the petitioner No.6 – Narendrabhai Talshibhai Parmar was younger brother of the husband of the sitting member – Jasiben Bhanubhai. Similarly, the petitioner No.9 - Abubsha Rahmansha was also the relative of one of the sitting member of the selection committee - Ayubsha Bapusha Divan. The petitioner No.3 was also related to one of the member of the selection committee i.e. Girishbhai Rathod. Thus, it appears that the resolutions were passed by the selection committee to favour the petitioners. As stated hereinabove and even as per the affidavit of the Chief Officer, the relevant records and proceedings of the selection/interviews by the selection committee dated 6.10.1996 are not available. Thus, it appears that the alleged interviews/selection by the selection committee on 6.10.1996 was an eye wash and camouflage and the resolutions were passed illegally. It is also required to be noted that before filling up the posts on permanent basis, the sanction of

the Director of the Municipalities is required to be obtained. In the present case, the sanction of the competent authority before making the appointment of the petitioners have not been obtained. The appointment of the petitioners are contrary to the provisions of Section 50 of the Gujarat Municipalities Act. Considering the above and over all facts and circumstances of the case and the original records and proceedings not found/available with the Municipality and for inviting the applications by giving advertisement only in one newspaper i.e. only in “Jaihind” is nothing but an eye wash and even in the said advertisement also full particulars are not given as stated hereinabove. Under the circumstances, it cannot be said that the Collector has committed any error and/or illegality in quashing and setting aside the resolution Nos.1 to 4 dated 6.10.1996 of the selection committee of the Viramgam Nagar Palika and consequently, directing the Municipalities to restore the position, which was prevailing prior to the said resolutions.

9. Now so far as contention on behalf of the respective petitioners that once the resolutions are implemented the Collector has no jurisdiction under Section 258 of the Gujarat Municipalities Act is concerned, after going through the judgment of the Full Bench of this Court in case of ***Parshottambhai G. Chavda V/s. State of Gujarat*** (supra), Shri Supehia, learned advocate appearing for the petitioners has not pressed the aforesaid submission/contention.

10. Now so far as the contention on behalf of the petitioners that as the petitioners are working since 1996, their services are not required to be disturbed is concerned, it is required to be noted that the petitioners are working since 1996 pursuant to the interim order passed by this Court and therefore, merely because, the petitioners are working under the interim order is no ground not to disturb the petitioners, when it is found that the appointments of the petitioners were illegal. At this stage, the

judgment of the Hon'ble Supreme Court in case of ***Dilipbhai Shaingram Patil*** (supra) is required to be referred to. The Hon'ble Supreme Court in the aforesaid decision has held that if the persons are continued pursuant to the interim order, the petition is not required to be allowed and the same is required to be decided on merits as the interim order would be during the pendency of the special civil application and merely because, pursuant to the interim orders the petitioners are continued, is no ground not to decide the special civil application on merits. Under the circumstances, the contentions/ submissions made on behalf of the petitioners that their services may not be disturbed as they are continued under the interim order cannot be accepted.

11. For the reasons stated above and when the resolutions passed by the selection committee are absolutely illegal and mala-fide and the appointments of the petitioners are not legal and as the entire alleged selection process is

found to be an eye wash, the Collector has rightly exercised the jurisdiction under Section 258 of the Gujarat Municipalities Act and has rightly set aside the resolutions and has rightly directed the Nagar Palika to restore the position prevailing prior to the aforesaid resolutions dated 6.10.1996 hence, there is no illegality committed by the Collector, Ahmedabad. Under the circumstances, the petition fails. Ad-interim relief/interim relief granted earlier stands vacated forthwith. Rule discharged. No costs.

[M.R.Shah, J.]

FURTHER ORDER

At this stage, Shri Supehia, learned advocate appearing for the petitioners prays to continue the interim relief granted earlier for a period of 2 weeks. In the facts and circumstances of the case, the interim relief granted earlier is directed to be continued till 9th March, 2007.

[M.R.Shah, J.]

kdc.